

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

_____)	
Reazul Islam,)	
)	
Petitioner)	
)	
v.)	
)	
Immigration and Naturalization)	Case No:
Service,)	00-3314
)	
Respondent)	
_____)	

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APPELANT'S BRIEF-REAZUL ISLAM

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SUMMARY OF CASE

This is an appeal from an Administrative Agency. The Board of Immigration Appeals denied the Petitioner's appeal, denying his asylum application on August 24, 2000. The Petitioner waives oral argument.

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JURISDICTIONAL STATEMENT

The Board of Immigration Appeals issued and mailed their decision to the Petitioner on August 24, 2000. The Petitioner's filed a Petition for Review with this court on September 25,2000. The

Board of Immigration Appeals opinion is a final order in the Petitioner's case. IIRIA S 309(c)(4))

STATEMENT OF ISSUES

THE BOARD OF IMMIGRATION APPEALS ABUSED ITS DISCRETION IN DENYING THE PETITIONER'S APPLICATION FOR ASYLUM.

Feleke v. I.N.S., 118 F.3d. 594 (8th Cir. 1997)
I.N.S. v. Elias Zacarias, 502 U.S. 478

STATEMENT OF CASE

Petitioner made an application for Asylum with the Immigration and Naturalization Service (hereinafter the Service) on October 04, 1995. He was interview by the Service's Asylum Office. After this interview, Petitioner's asylum application was forwarded to the Executive Office of Immigration Review-Office of the Immigration Judge in Chicago, IL.

Petitioner appeared for a "master docket" hearing on July 16, 1996. At this hearing, the Petitioner reaffirmed his Asylum Application. A

merit hearing was held on, December 10, 1996 where Petitioner presented testimony and evidence in support of his asylum application. The Immigration Judge issued a written decision on August 12, 1997.

The Petitioner timely appealed the denial of his asylum claim to the Board of Immigration Appeals on September 09, 1997. The Board of Immigration Appeals mailed, to the Petitioner, a written decision on August 24, 2000. A Petition for Review was filed with the Eighth Circuit Court of Appeals on September 25, 2000.

STATEMENT OF FACTS

The Petitioner is a male native and citizen of Bangladesh, who entered the United States on July 23, 1993 as an F-1 nonimmigrant student at the University of Kansas. (ROA 203). The Petitioner's father, Monirul Islam, is a leading member of the Jatiyo Party in Bangladesh. (ROA at 95-99); Group Exhibit #2. When the Jatiyo Party lost control of the Parliament in 1990 the Petitioner's immediate

family suffered persecution at the hands of the Bangladesh National Party(BNP). ROA (Group Exhibit #2). Even though the BNP is no longer in power, it is still a major political force within Bangladesh. (ROA 180-189, 192-198).

The Petitioner is a member of the Jatiyo Party and offered several letters attesting to his party affiliation. (ROA 95-99). He stated his father had received several death threats, by letter and by telephone from the BNP. (ROA at 86). The Petitioner and his driver were forcibly removed from their family car by members of a rival political party. (ROA at 86-88). The group then proceeded to destroy the Petitioner's vehicle. Id. Earlier incidents occurred in 1990 when the Petitioner's apartment was broken into and ransacked and their neighbors beaten by members of the BNP. (ROA at 86).

The shooting of Rashed Kahn Menon, in August 1992, started a new wave of persecution against

the Petitioner and his close family members. The Petitioner's father was arrested without a warrant for "questioning". (ROA at 88). Following this arrest, the Petitioner's father was charged with attempted-murder of Rashed Kahn Menon and was denied bond. (ROA at 110-118); Group Exhibit #2. Only upon his appeal to the Supreme Court of Bangladesh was the Petitioner's father, Monirul Islam, released from prison. (ROA at 78); Group Exhibit #2. During this time, the local police wanted to "interview" the Petitioner. (ROA at 99).

However, he interpreted the police's real intention to put him in jail or prison. Id. Following the numerous police visits, the Petitioner fled to his Uncle's house in Mataracas and ceased all contact with his immediate family for approximately a month. (ROA 88-92). At this time, the Petitioner made a decision to flee Bangladesh and started his application for an F-1

student visa. (ROA at 93-94).

The Petitioner testified he feared to return to Bangladesh, because he may end up murdered like other Jatiyo members. (ROA 149); Group Exhibit #7. Finally, the Petitioner's testimony was uncontroverted and deemed credible. (ROA 31-37.)

SUMMARY OF ARGUMENT

The Board of Immigration Appeals ignored evidence in the record when issuing it's decision. Petitioner is entitled to a fair review of the record as a whole or the reviewing agency has abused its discretion.

STANDARD OF REVIEW

The Court's review of a denial of asylum is limited to determining whether there has been an abuse of discretion. Feleke v. INS, 118 F.3d 594, 597 (8th Cir. 1997) An abuse of discretion happens if the decision is "without rational explanation, departs from established policies, invidiously

discriminates against a particular race or group, or where the agency fails to consider all factors presented by the alien or distorts important aspects of the claim." Id. (citing Nyonzele v. I.N.S., 83 F.3d. 975, 979 (8th Cir. 1996)). The Board's decision that Petitioner is not eligible for asylum must be upheld if supported reasonable, substantial, and probative evidence on the record considered as a whole. I.N.S. v. Elias Zacarias, 502 U.S. 478, 481 (1992). A matter of doubt is to be resolved in favor of the alien in deportation proceedings. Fong Haw Tan v. Phelan, 333 U.S. 6 (1948).

ARGUMENT

I. THE BOARD OF IMMIGRATION APPEALS ABUSED ITS DISCRETION IN DENYING THE PETITIONER'S APPLICATION FOR ASYLUM.

The Board decided the Petitioner would not have a reasonable person in his position would not fear persecution on ground setforth under the Act.

Matter of S-P, 21 I. & N. Dec 486 (BIA) 1996, 8

C.F.R. S 208.13 (2000). However, the Board ignored evidence in the record that would have sustained Petitioner's burden of proof he suffered past persecution and has "a well founded fear of persecution." I.N.S. v. Cordoza-Fonseca, 480 U.S. 421 (1987).

An applicant for asylum must show he is a refugee. I.N.A. S 208 (a) A refugee is defined as a person who is outside his country of nationality is unable or unwilling to return because of a well founded fear of persecution on account of race religion, nationality, membership in a particular group or political opinion. I.N.A. S 101(a)(42)(A).

In, I.N.S. v. Cordoza-Fonseca, the court stated that a well-founded fear is a reasonable fear of persecution that could amount to a low probability of 10% percent chance of persecution. 480 U.S. 421, 425 (1987). Persecution is defined as a showing that harm or suffering will be inflicted upon the alien in order to punish the applicant for

possessing a characteristic the persecutor seeks to overcome. Guevara-Flores v. I.N.S., 786 F.2d 1242 (5th Cir. 1986). Petitioner must prove well-founded fear is objectively and subjective reasonable fear of persecution. Nyonzele v. I.N.S., 83 F.3d 975, 981 (8th Cir. 1983).

An asylum applicants testimony alone is sufficient to establish his eligibility for relief where testimony is credible, persuasive, and refers to specific facts that give rise to an inference that the applicant has been or has a good reason to fear that he or she will be singled out for persecution" on account of an enumerated ground. I.N.S. v. Cardoza-Fonseca, 480 U.S. 421 (1987). Petitioner must prove well-founded fear is objectively and subjectively reasonable. Nyonzele v. I.N.S., 83 F.3d 975(8th Cir. 1983).

The Petitioner's testimony revealed his fear on why he had fear when he left Bangladesh. In uncontroverted testimony before the Immigration

Judge, who determined it to be credible, the Petitioner stated he was a member of Jaytio Party in Bangladesh. (ROA at 95-99). He stated that his father had received death threats, by letter and telephone from the B.N.P. (ROA 86-90). The apartment in which the Petitioner lived was broken into and personal property was destroyed. (ROA at 86) The Petitioner was not at the apartment at the time. Id. He stated that his neighbors, that night, were beaten by members of the BNP. Id.

Petitioner also recounted an incident where his driver were forcibly removed from their family car by members of the BNP. (ROA at 86-90). He stated specifically that people knew the car he was driving as that of Monirul Islam. (ROA at 88-89).

The Petitioner provided documentation and testimony concerning the arrest and detention, ,without bond, of his father. (ROA at 110-118). Monirul Islam was charged with the attempted murder of Rashed Kahn Menon, leader of Bangladesh Workers

Party. (ROA at 88). During his father's detention the police were wanting to "interview" the Petitioner. (ROA at 99). The Petitioner determined the police hoping to detain him in the same manner as his father. Id. The Petitioner fled to his uncle's house in Mataracas, Bangladesh. (ROA at 88-92). At that time he determined he could not safely live in Bangladesh and made plans to leave. (ROA at 93-94).

The Board did not consider all factors in the record when issuing their decision. The Board's decision does not reflect a decision based on the record as a whole. See., Feleke v. I.N.S., 118 F.3d 594 (8th Cir. 1997). (abuse of discretion occurs when the agency fails to review all factors presented by alien.)The Board and Immigration Judge by not accounting for the Respondent's testimony have abused their discretion by not reviewing the record as a whole. Id.

Conclusion

The Petitioner request this court find the Board of Immigration Appeals abused in discretion by failing to make a decision on the whole record and grant asylum application.

Respectfully submitted,

Conn Felix Sanchez
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

I hereby state that the above brief was written with Microsoft Works 4.0 for Windows 95. The font type used was Courier 14 point. The enclosed

diskette has been scanned by Norton Anti-Virus
2000 software.

Conn Felix Sanchez